Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-964

IRANIAN SHIPPING LINES, S.A.,

*Petitioner,*

v.

ARYA SHIPPING LINES, S.A.,
GEORGE L. MANTA, et al.,

*Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## JOINT BRIEF IN OPPOSITION

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## JOINT BRIEF IN OPPOSITION

### Preliminary Statement

The decisions below in this case raise no new or significant issues. The District Court dismissed the purported cross-claim of Iranian Shipping Lines ("ISL"), a defunct Iranian company, because ISL had admittedly been dissolved under the law of Iran and lacked the capacity thereunder to maintain this litigation. The Court of Appeals unanimously affirmed, on the basis of the District

Court's opinion. The decisions thus reflected no more than an application of the long-standing rule that the capacity of a corporation to sue or be sued is governed by the law under which the corporation is organized. This rule has been repeatedly stated by this Court; consistently followed throughout the Circuits; and expressly codified in the Federal Rules of Civil Procedure. Plainly, there is no "special and important" reason (see Rule 19 of this Court) for granting this Writ.

## Counterstatement of Question Presented

There was, and is, only one dispositive issue in this case: Where ISL was admittedly a defunct Iranian corporation that had been dissolved under the law of Iran which provides no savings statute suspending the incidents of corporate death, did the Courts below correctly hold that ISL lacked capacity to maintain the instant action?

## Counterstatement of the Case

The Statement of the Case in ISL's petition includes a melange of irrelevant and unsupported contentions. In actuality, the facts leading to the decisions below were simple and nearly all undisputed. We will set forth those facts *infra*. Because of the distorted picture presented by ISL, however, we include the following background in order to place this case in proper perspective.

### (a) Background

The decision to which this petition relates was issued by District Judge Henry F. Werker in October 1976 and affirmed by the Second Circuit in October 1977. Petitioner, however, also refers to two earlier opinions by two other District Judges to whom some phase of this case had been assigned at one point. The earlier opinions have no bearing upon the instant petition.



Petitioner points first [Petitioner's Brief for certiorari ("Petitioner's Brief"), p. 5] to the 1970 opinion of Judge Frankel in the case of *Alosio* v. *Iranian Shipping Lines, S.A.*, 307 F. Supp. 1117 (S.D.N.Y. 1970), supposedly for "a summary of the alleged illegal acts of the respondents". That opinion was simply a decision on a preliminary motion to dismiss for lack of jurisdiction and cross-motion for discovery. As Judge Frankel was careful to point out therein, ". . . To be sure, the charges of fraud and conspiracy in the verified complaint and affidavits opposing the present motion may not prevail ultimately . . . ." (307 F. Supp. at 1119). ISL's allegations have been denied and contested throughout by the respondents, and there has never been the slightest finding on the merits that there is any truth in those allegations.

Petitioner also refers (Petitioner's Brief, p. 6) to a decision by Judge Brieant upon a motion made by certain respondents in May 1972 to dismiss ISL's cross-claim. What petitioner fails to say, however, is that Judge Brieant had specifically limited his decision to the factual evidence proffered upon that motion and that his denial of the motion was expressly stated to be without prejudice to renew upon a showing of further facts. Obviously, no facts could be presented to Judge Brieant upon that motion as to ISL's subsequent dissolution under Iranian law or as to the substance and effect of that law. Indeed, as Judge Werker subsequently noted in his October 1976 opinion, the motion before Judge Brieant had been "addressed to a different question of law and Judge Brieant denied it 'without prejudice to renew on a showing of facts indicating absence of actual authority.'" (426 F. Supp. at 690, n. 3; SA 687).•

The motion before Judge Werker related to ISL's status under Iranian law. ISL styled itself as "a corporation

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• References to "A" are to the Appendix filed by petitioner before the Second Circuit. References to "SA" are to the Supplemental Appendix filed by respondents before the Second Circuit.

organized and existing under the law of Iran" (A 2a, 155a) in the blunderbuss cross-claim it filed in March 1972 against some 35 parties herein. But, as respondents were eventually to learn, the Iranian Parliament had promulgated a statute in March 1969, requiring that all Iranian commercial entities such as ISL file papers of reorganization within three years or they would be dissolved (SA 407-408). The initial three-year grace period was extended for an additional year by an amendment in April 1972 (SA 408). ISL was apprised of the requirement through a communication from the Iranian Consulate (A 13a, 16a), but failed to comply with it. Accordingly, ISL was dissolved by operation of Iranian law on April 27, 1973 (SA 408).

ISL's dissolution was specifically raised in an Answer subsequently filed in response to ISL's cross-claim.* And, in June 1976, respondent Arya Shipping Lines ("Arya"), joined by other respondents, moved for summary judgment based upon the April 1973 dissolution (SA 402, 649, 651). It is the decision upon that motion and the affirmation thereof that give rise to the instant petition.

**(b) The Summary Judgment Motion**

The facts upon which the motion below was argued, decided and subsequently affirmed, were simple and undisputed. As set forth in the Statement of Material Facts filed by Arya, those facts were (SA 404-405):

1. Iranian Shipping Lines, S.A. ("ISL") was organized in 1961 as a "Joint Stock Company," under

* That Answer, filed by one of the Iranian cross-claim defendants, alleged as a defense (SA 401):

"Iranian Shipping Lines S.A. as of the [sic—this] date has no corporate existence as it did not adopt itself to the recent enactments passed by the Legislative Body of the Imperial Government of Iran, within the time-grace allowed by such amendments."



the Commercial Code of Iran that had become effective in 1932.

2. In 1969, the Parliament of Iran amended the 1932 Code by providing that all pre-existing Joint Stock Companies, such as ISL, were required to transform themselves into one of the two new forms of organization ("Public" or "Private" Joint Stock Companies) or into a form of organization other than a Joint Stock Company.

3. The 1969 Amendments provided a three-year grace period for the consummation of the required transformation and further provided that all Joint Stock Companies failing so to do themselves within the grace period would be dissolved.

4. In 1972, the three-year grace period was extended one year by the Iranian Parliament, so that it expired on April 27, 1973.

5. ISL never consummated the required transformation.

6. Under Iranian law, ISL is considered as having been dissolved as of April 27, 1973, and, thereunder, lacks the capacity to maintain this litigation.

ISL, in response, did not dispute any of the matters specified in paragraphs 1-5 nor the fact of dissolution set forth in the first part of paragraph 6 of the Statement.* The record thus showed without dispute that ISL was a defunct Iranian Joint Stock Company which had been dis-

* Rule 9(g) of the General Rules for the Southern District of New York requires that a party seeking summary judgment file a concise Statement of Material Facts as to which that party believes there is no genuine issue and provides that any fact so specified "will be deemed admitted unless controverted" by the opposing party. See also, Fed. R. Civ. P. 56(e), which requires that a response to a motion for summary judgment "must set forth facts showing that there is a genuine issue for trial."

solved under the law of Iran for failure to comply with mandatory registration provisions thereunder. Iranian law does not include a provision automatically suspending the incidents of corporate death, to give an entity such as ISL any continuing life. As ISL conceded in its opposing papers before the District Court, "there is no savings statute for a specified period of time" under Iranian law. (ISL's Memorandum in Opposition to Motion for Summary Judgment, p. 2, filed July 9, 1976.) "ISL", in short, was, and is, dead.

## Reasons for Denying Certiorari

The decisions below reflect a clear and reasoned application of the unambiguous language of Rule 17(b) of the Federal Rules of Civil Procedure to precisely the situation for which it was intended. The decisions are entirely consistent with prior decisions of this Court, and there is no conflict among the various Circuits in their reported decisions on the same topic.

What ISL describes as an allegedly "ominous" development for all corporations "that find themselves involuntarily dissolved by operation of the laws under which they were organized" (Petitioner's Brief, p. 11), is nothing but an application of the recognized principle, codified in Rule 17(b), that the capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. The law under which ISL was organized was that of Iran, a foreign sovereign state which has an absolute right to regulate the existence, or non-existence, of its corporations. This is hardly a recurrent question of public concern, and the results achieved are of interest only to the particular litigants involved, based on uncontradicted facts peculiar to this litigation as found by the District Court and unanimously affirmed in the Court of Appeals for the Second Circuit.



### I. The courts below correctly held that ISL, having been dissolved pursuant to Iranian law under which it had been organized, lacked capacity to maintain this litigation

The courts below, pursuant to Fed. R. Civ. P. 17(b), applied the law of Iran, where ISL had been organized; found that ISL had been dissolved pursuant to that law; and accordingly held that ISL lacked capacity to maintain this litigation. The decisions thus involved no more than a question of corporate capacity long settled in this Court and in many other courts as well.

It has long been our law that a corporation dissolved under the laws of its place of incorporation is without legal capacity to maintain a suit in the federal courts and that all actions pending at the time of dissolution are abated, in the absence of a statute to the contrary. This Court enunciated that principle in its seminal decision in *Oklahoma Natural Gas Co.* v. *Oklahoma*, 273 U.S. 257 (1927). There, it was held:

> It is well settled that at common law and in the federal jurisdiction a corporation which has been dissolved is as if it did not exist, and the result of the dissolution cannot be distinguished in its effect. [Citations omitted.] It follows, therefore, that as the death of the natural person abates all pending litigation to which such a person is a party, dissolution of a corporation at common law abates all litigation in which the corporation is appearing either as plaintiff or defendant (273 U.S. at 259).

Accord, *Chicago Title & Trust Co.* v. *Forty-One Thirty-Six W. Wilcox Bldg. Corp.*, 302 U.S. 120, 124-128 (1937).

This rule has been followed repeatedly by courts in dismissing pending claims of corporations which have been

dissolved.* It applies to suits based upon federal claims, as well as to state-created causes of action. *Chicago Title & Trust Co.* v. *Forty-One Thirty-Six W. Wilcox Bldg. Corp., supra* (petition for reorganization under Sec. 77B of the Federal Bankruptcy Act); *Walder* v. *Paramount Publix Corp.*, 132 F. Supp. 912, 917 (S.D.N.Y. 1955) (action under federal anti-trust statutes); *Seaboard Terminals Corp.* v. *Standard Oil Co.*, 35 F. Supp. 566, 569 (S.D.N.Y. 1940) (action under federal antitrust statutes).

The governing law in the instant case is that of Iran, where ISL had been incorporated. This is clear from Fed. R. Civ. P. 17(b), which provides: "The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized." Thus, the courts below were plainly correct in applying the law of Iran to determine ISL's capacity to sue.

ISL contends that the courts below somehow "misconceived" the meaning of Fed. R. Civ. P. 17(b). Seeking to develop a visibly strained theory of "general" capacity, ISL cites (Petitioner's Brief, pp. 13-14) to the opinion of the District Court in *Joseph Muller Corp. Zurich* v. *Societe Anonyme De Gerance et D'Armement*, 314 F. Supp. 439 (S.D.N.Y. 1970), *aff'd in part rev'd in part*, 451 F.2d 727 (2d Cir. 1971), *cert. denied*, 406 U.S. 906 (1972), as "the leading case on this matter" and claims that it supports ISL's position on this petition for Certiorari. Not so. As confirmed by the decision of the Second Circuit in *Muller*, that case, to the extent it is relevant at all, completely supports the opinions of the courts below in this case.

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* *E.g., Mather Construction Co.* v. *United States*, 475 F. 2d 1152, 1155 (Ct. Cl. 1973); *Katz* v. *Aspinwall*, 342 F. Supp. 286 (N.D. Ala. 1971), *aff'd mem.*, 459 F.2d 1045 (5th Cir.), *cert. denied*, 409 U.S. 1000 (1972); *Beasley* v. *Fox*, 173 F.2d 920 (D.C. Cir. 1949); *Woodbury Granite Co.* v. *United States*, 59 F. Supp. 150 (Ct. Cl. 1945); *Seaboard Terminals Corp.* v. *Standard Oil Co.*, 35 F. Supp. 566 (S.D.N.Y. 1940).



The principal issue in *Muller* was whether a foreign treaty precluded setting venue in this country of an action between two foreign entities. On that question the court held that Rule 17(b) concerned questions of capacity, not of venue (*i.e.*, whether, not where, a corporation can sue), and therefore the treaty provision could have no bearing on the determination of capacity under that Rule. That holding, of course, has nothing to do with this case. What is of direct relevance from *Muller*, in part an antitrust case, is its holding that the capacity of a corporation to sue at all (there, conceded by the parties) is to be determined under Rule 17(b) by the law of its place of organization, even if that place is a foreign country (451 F.2d at 728). In short, ISL is correct that *Muller* has application to this case, but, so applied, that case confirms exactly why the decisions below were correct. Once dissolved for failure to comply with Iranian law, ISL simply had no further capacity, "general" or otherwise, to maintain this litigation.

ISL further suggests (Petitioner's Brief, p. 12) that a writ of certiorari should issue because there was no specific prohibition in Iranian law that expressly prevented a defunct Iranian entity such as ISL from suing in the United States. But ISL has the issue backward. The law of Iran provided that any Joint Stock Company that, like ISL, had been dissolved had no capacity to maintain litigation of *any* sort. Iranian law contained no further specific prohibition, because none was needed. Indeed, the only possible reason for any further specific provision at all would have been to create an exception to the general proscriptive rule—precisely the exception that Iranian law does not contain.

This Court has repeatedly stated that the incidents of corporate life are extinguished upon dissolution, unless the state of corporate organization has provided an exception through a specific "savings" statute for that purpose. As this Court put it in *Oklahoma Natural Gas:*

> "[C]orporations exist for specific purposes, and only by legislative act so that if the life of the corporation

> is to continue even only for litigating purposes it is necessary that there should be some authority for the prolongation." (273 U.S. at 259.)

See also, *Chicago Title & Trust Co.* v. *Forty-One Thirty-Six W. Wilcox Bldg. Corp., supra* at 124-25. But as the District Court noted, and as ISL conceded to that court (See *supra*, pp. 5-6), Iranian law contains no savings statute. The Iranian Parliament appears instead to have announced the dissolution of non-complying Joint Stock Companies such as ISL four years in advance, thereby prolonging their existence by a specified period *prior* to dissolution. As Dr. Sabi, an Iranian attorney and a recognized authority on the law of Iran stated by affidavit to the court below (SA 657, 680):

> "[D]issolved Joint Stock Companies such as ISL have absolutely no corporate capacity under Iranian law to prosecute this or any other litigation. Whether or not such dissolution occurred prior to or subsequent to commencement of the litigation, the operative effect of ISL's dissolution under the law of Iran is the same—the capacity to maintain the litigation, if any, immediately ceased upon the dissolution of ISL as a corporate entity."•

Attempting to avoid the plain import of Iranian law, ISL purports to find the requisite capacity by arguing that ISL was "subject" to dissoluition proceedings under the 1932 Commercial Code of Iran. ISL's argument in this regard was, and is, unsupported by any proof, expert or otherwise, and is directly contrary to the expert testimony

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• Compare, *e.g., Oklahoma Natural Gas Co.* v. *Oklahoma, supra* (Oklahoma statute provided that "no action whereto any such corporation is a party shall abate by reason of such dissolution"): *Chicago T. & T. Co.* v. *Forty-One Thirty-Six W. Wilcox Building Corp., supra* at 122 (Illinois statute provided that corporations whose powers have expired "shall continue their corporate capacity for two years for the purpose only of collecting debts due such corporation. . . .").



of Dr. Sabi. Indeed, in response to the motion before the District Court, ISL submitted no proof whatsoever except an affidavit by its own attorney (SA 654) containing nothing more than his own legal argument—hardly amounting to the "significant probative evidence" required to defeat a motion for summary judgment. *First Nat'l Bank* v. *Cities Service Co.*, 391 U.S. 253, 290 (1968). See also Fed. R. Civ. P. 56(e). Certainly, this can provide no basis for the Writ sought by ISL.

Furthermore, ISL's argument in this respect is simply immaterial. No liquidation proceedings were ever commenced, and no liquidator was even appointed (SA 657-659). As the courts below found (426 F. Supp. at 689), Iranian law provides two specific and exclusive methods for appointment of a liquidator for a Joint Stock Company, one by a shareholder vote at a meeting called according to specific requirements, and the other by order of an Iranian court of first instance upon a proper application (SA 657-658). There is no dispute as to these requirements; ISL has conceded them. Nor is there any dispute that the requirements were never met (SA 658).

These prerequisites are a basic part of the laws governing corporate structure and operations in Iran. By requiring appointment of a liquidator who is to act as a fiduciary on behalf of the entire corporate interest, these requirements, similar to those in this country (See, *e.g.*, N.Y. Bus. Corp. Law §§ 1001, 1111 (McKinney 1963)), protect a dissolved entity like ISL against what otherwise could be self-interested actions of a minority faction. This could arise, for example, from the prosecution of a litigation which, although purportedly on behalf of the entity, would in fact constitute a waste of its corporate assets. As held by the courts below, these requirements of Iranian law are directly applicable to this case. This Court put it succinctly in *Oklahoma Natural Gas Co.* v. *Oklahoma:*

> "The matter [corporate capacity] is really not procedural or controlled by the rules of the court in which

> the litigation pends. It concerns the fundamental law of the corporation enacted by the state which brought the corporation into being." (273 U.S. at 260).

Here, the "fundamental law" of ISL as enacted by Iran, the sovereignty that brought ISL into being, plainly provides that ISL has no capacity.

Nor does the fact that ISL's cross-claim purported to sound under the antitrust laws change the applicability of the foregoing. For, as this Court put it in *Chicago Title & Trust Co.* v. *Forty-One Thirty-Six W. Wilcox Bldg. Corp., supra,* in holding that the dissolved corporation there lacked capacity even to commence reorganization proceedings under the Federal Bankruptcy Act:

> "[I]t hardly will be claimed that the federal government may breathe life into a corporate entity thus put to death by the statute in the lawful exercise of its sovereign authority . . . if the State attach qualifications to its sentence of extinction, nothing can be added to or taken from these qualifications by federal authority." (302 U.S. at 128).

In short, the lower courts were correct in holding that ISL lacks capacity to maintain this cross-claim and in dismissing it. Plainly, those decisions do not begin to warrant issuance of the extraordinary Writ that ISL now requests.

## II. The lower courts properly held that Spanos had no capacity to maintain ISL's cross-claim

ISL argues collaterally that a writ of certiorari should issue because its cross-claim supposedly should not have been dismissed, since Spanos somehow had "capacity to manage the suit on behalf of ISL" (Petitioner's Brief



p. 16). ISL refers in this regard to the sentence of Rule 17(b) relating to individuals acting in a "representative" capacity. But, the instant claim was not commenced as a representative action. The only relevant question therefore is not whether Spanos had capacity to "manage the suit on behalf of ISL," but whether ISL had the capacity to maintain the suit at all. Spanos' alleged capacity to "manage" is simply irrelevant to ISL's capacity to litigate and to the result reached below.

Moreover, the result would be the same even if the cross-claim *arguendo* had been filed "representatively." It is black letter law that a representative can have no greater capacity than the entity he purports to represent. (*E.g.,* Restatement (Second) of Agency Sec. 120, Official Comment (a) (1958), "One cannot act on behalf of a non-existent person," W. Seavey, *Agency* Sec. 48 (1964).) This doctrine has equal application to a corporate context, whether in derivative suits or otherwise.* If this were not the law, it would lead to the untenable conclusion that a corporation could circumvent the laws of its place of origin merely by designating various collection agents to "manage" its claims.

Nor could Spanos claim to derive any capacity to "manage", let alone maintain, the cross-claim, from his status as a former director of ISL. As the District Court held and as the unrefuted record shows,** Spanos' term and

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* *E.g., Walder* v. *Paramount Publix Corp.,* 132 F. Supp. 912, 917 (S.D.N.Y. 1955); *Potter* v. *Walker,* 276 N.Y. 15, 27 (1937); *Alexander* v. *Donohoe,* 143 N.Y. 203, 211, 38 N.E. 263 (1894); *Nelson* v. *Miller,* 212 So. 2d 67 (Fla. App. 1968).

** *E.g.,* Sabi Aff. (SA 660) which stated:

> "Mr. Spanos' terms of office as a Director or Managing Director of ISL has expired. Therefore, even if liquidation proceedings had been properly commenced, which they have not, Mr. Spanos would lack the authority to prosecute this or any

*(footnote continued on following page)*

authority as a Director had expired no later than May 31, 1969, nearly three years before the cross-claim was filed. ISL recognizes this, and it conceded below that Spanos *"never relied on his position as a director as authority"* for managing the cross-claim. (ISL's initial brief to the Second Circuit, p. 24.)

ISL's reliance (Petitioner's Brief, pp. 4, 17) upon a board resolution passed in 1964 provides no greater support for its position. Again, the dispositive question is the capacity of ISL, not of Spanos. Further, even if it were relevant, the 1964 resolution, whatever its effect may have been at one time, expired under Iranian law, as the District Court found, when the term and authority of the ISL Board expired on May 31, 1969. Dr. Sabi put it succinctly in his affidavit filed below (SA 660):

> "Under Iranian law, the authority, if any, given to Spanos to act as agent for the Board of Directors, was terminated on May 31, 1969 (prior to institution of this action) upon the expiration of the term of office of the Board of Directors, Spanos' principal."•

Furthermore, it is obvious from the face of the 1964 Board resolution that it did not relate to dissolution proceedings eight years later (as, indeed, it could not under

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*(footnote continued from preceding page)*

> other litigation on behalf of ISL as a Director/Liquidator upon the purported authority of such expired offices."

Iranian law has no "holdover" doctrine which would permit tenure beyond the elected term (SA 660). Where a corporation is dissolved and no longer a going concern, American courts also do not permit "holding over." *Berl* v. *Crutcher*, 60 F.2d 440, 444 (5th Cr. 1932), *cert. denied*, 287 U.S. 670 (1933).

• Iranian law would govern this question, even if as suggested by ISL (Petitioner's Brief, p. 17) reference were made under the third sentence of Rule 17(b) to the law of New York, since that law would include conflict of laws principles. *Klebanow* v. *New York Produce Exchange*, 344 F.2d 294, 297 (2d Cir. 1965).



Iranian law; see Sabi Aff., SA 661). Even under the law of this country, "[a]uthority conferred upon a corporate officer during the lifetime of the corporation cannot be invoked as a justification for his acts after its corporate death, where the acts are not designed and calculated to wind up the affairs of the company . . ." 16A Fletcher, Cyclopedia of Private Corporations Sec. 8117 at 270 (1962). Any suggestion that ISL's cross-claim was somehow part of liquidation proceedings as to it is completely belied, as the courts below found, by Count III of the cross-claim, which sought to *enjoin* the commencement of any such liquidation proceedings. The cross-claim stated in part (Sec. 48):

> "Forty-eight percent of the shares of ISL are opposed to any dissolution or end of its corporate existence . . . . Under ISL's Articles of Association, a resolution to dissolve or liquidate ISL cannot legitimately be carried if it is opposed by as many as forty-eight percent of the shares issued and outstanding." (A 180a-180a-1)

In short, ISL's argument as to Spanos' alleged capacity to "manage" its claim is no more than a red-herring. The absence of capacity in ISL, which purported to bring the cross-claim, is dispositive. Even if Spanos' capacity were the issue, his capacity could be no greater than that of ISL, which is naught. Thus, this argument, too, fails to provide any basis for issuance of a writ of certiorari.

## CONCLUSION

**For the foregoing reasons, the petition for issuance of a writ of certiorari should be denied.**

Dated: February 3, 1978

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